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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Cecilia M. Bean,

10 Plaintiff,

11 v.

12 BAC Home Loans Servicing LP f/k/a
13 Countrywide Home Loans Servicing LP, et
al,

14 Defendants.

No. CV-11-00553-PHX-GMS

**TEMPORARY RESTRAINING
ORDER**

15 Pending before the Court is the Emergency Application for Temporary Restraining
16 Order (“TRO”) filed by Plaintiff Cecilia Bean’s daughter, Gayle Miller. (Doc. 52.) In her
17 Petition, Ms. Miller requests that the Court temporarily enjoin a trustee’s sale of property
18 located at 2311 W. Hunter Court., Phoenix, Arizona 85085 (the “Property”). The
19 trustee’s sale is scheduled for September 18, 2013. On September 17, the Court
20 conducted a hearing on the matter. (Doc. 53.) Ms. Miller and Defendant’s counsel were
21 present.

22 As a preliminary matter, this Motion was filed by Ms. Miller and not by Plaintiff
23 Cecilia Bean who passed away some months ago. After a status conference on July 26,
24 the Court ordered Ms. Miller to file a motion to substitute after being named as
25 representative of Ms. Bean’s estate by the probate court or obtaining title to the Property.
26 (Doc. 47.) It further ordered that if she did not file such a motion by October 24, 2013,
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1 this matter would be dismissed pursuant to Federal Rule of Procedure 25(a).¹ (*Id.*) The
2 Court will consider Ms. Miller's Application for TRO pending her substitution as the real
3 party in interest. But if Ms. Miller does not file a motion to substitute after obtaining such
4 an interest by October 24, this matter will be dismissed.

5 Federal Rule of Civil Procedure 65 authorizes the Court to issue a preliminary
6 injunction or TRO upon a proper showing. The standard for issuing a temporary
7 restraining order is essentially the same as that for issuing a preliminary injunction. *Beaty*
8 *v. Brewer*, 791 F. Supp. 2d 678, 681 (D. Ariz. 2011). To prevail on a request for a
9 preliminary injunction, a plaintiff must establish that (1) she is likely to succeed on the
10 merits; (2) she is likely to suffer irreparable harm in the absence of preliminary relief; (3)
11 the balance of equities tips in her favor; and (4) that an injunction is in the public interest.
12 *Winter v. Nat'l Res. Def. Council*, 555 U.S. 7, 20 (2008); *see* Fed. R. Civ. P. 65. The
13 Ninth Circuit uses a "sliding scale" approach, where "the elements of the preliminary
14 injunction test are balanced, so that a stronger showing of one element may offset a
15 weaker showing of another." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
16 1131 (9th Cir. 2011). Should the moving party demonstrate a very high likelihood of
17 injury, the likelihood of success on the merits may be relaxed. In such cases, an
18 injunction may be granted when "serious questions going to the merits were raised and
19 the balance of hardships tips sharply in the plaintiff's favor." *Id.* at 1134–35 (internal
20 quotation marks and citation omitted).

21 After review of the Motion and argument at the hearing, the Court finds that Ms.
22 Miller will face irreparable harm from the sale of the house at which she resides if the
23 trustee's sale proceeds as scheduled and that the balance of hardships tips in her favor.
24 Ms. Miller avowed to barely enough facts at the hearing to establish some likelihood of
25 success sufficient to obtain a TRO, if not a preliminary injunction. The Court previously

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27 ¹ Ms. Miller had filed a Motion for Substitution of the Real Party in Interest on
28 July 16, 2013. (Doc. 45.) The Court denied the Motion because it did not show that Ms.
Miller had been named as representative of Ms. Bean's estate by the probate court or
obtained title to the Property.

1 granted BAC's Motion to Dismiss the Complaint, (Doc. 12), as to all of Plaintiff's claims
2 but that of promissory estoppel. (Doc. 20.) Because Ms. Miller has demonstrated
3 hardship and some potential for an estoppel claim, the Court will grant the TRO. But at
4 the later hearing set out in this Order, she must make an evidentiary showing that there is
5 a likelihood of success on the merits of her remaining promissory estoppel claim.

6 **IT IS THEREFORE ORDERED** that Ms. Gayle Miller's Emergency
7 Application for Temporary Restraining Order (Doc. 52) is **granted**.

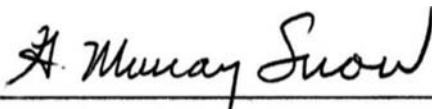
8 **IT IS FURTHER ORDERED** that Defendant and its appointed Trustee are
9 enjoined for a period of **fourteen (14) days** from the date and time of the issuance of this
10 Order from conducting or pursuing in any way a trustee's sale of Plaintiff's property
11 located at 2311 W. Hunter Court., Phoenix, Arizona 85085.

12 **IT IS FURTHER ORDERED** setting a preliminary injunction **hearing** for
13 **Friday, September 27, 2013 at 3:30 p.m.** in Courtroom 602, Sandra Day O'Connor U.S.
14 Federal Courthouse, 401 W. Washington St., Phoenix, Arizona 85003-2151.

15 **IT IS FURTHER ORDERED** that this Order is binding on Defendant;
16 Defendant's officers, agents, servants, employees, and attorneys; and any person acting in
17 concert or participation with anyone previously described and having actual notice
18 hereof.

19 **IT IS FURTHER ORDERED** that Ms. Miller shall, pursuant to Federal Rule of
20 Civil Procedure 65(c), post a non-recoverable bond of \$2,000.00 per month, the
21 reasonable equivalent of property rental, as security for this Temporary Restraining Order
22 to be paid into a trust account administered by Defendant's counsel.

23 Dated this 17th day of September, 2013.

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26 _____
27 G. Murray Snow
28 United States District Judge